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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,740	08/25/2003	Shanta Modak	070050.2458	2302
21003	7590	08/02/2004	EXAMINER	
BAKER & BOTTS 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			KENNEDY, SHARON E	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 08/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/647,740

Applicant(s)

MODAK ET AL.

Examiner

Sharon Kennedy

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 31-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action or the MPEP.

#### ***Information Disclosure Statement***

The prior art of the parent application, US Patent No. 6,626,873, has been considered herein. Applicant should submit a form PTO-1449 listing those references so that they may appear on the face of any patent issuing from this application.

#### ***Oath/Declaration***

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by number and filing date is required.

See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:  
The specification to which the oath or declaration is directed has not been adequately identified. See MPEP § 601.01(a).

#### ***Specification***

The specification is objected to because the "Reference to Related Applications" section needs to be updated. Correction is required. See MPEP § 608.01(b).

#### ***Double Patenting***

Claims 31-49 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-30 of U.S. Patent No. 6,626,873. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application encompass the claims of the parent.

Claims 31-49 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-30 of U.S. Patent No. 5,772,640. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application encompass the claims of the parent.

Claims 31-49 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-55 of U.S. Patent No. 6,106,505. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application encompass the claims of the parent.

Claims 31-41 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4, 8-11 of U.S. Patent No. 6,582,719. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application encompass the claims of the parent.

Claims 31-49 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,706,024. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application encompass the claims of the parent.

Claims 31-41 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No.

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6,083,208. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application encompass the claims of the parent.

Claims 31-49 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13, 17-22 of copending Application No. 09/746,670. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of this application encompass the claims of the co-pending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Allowable Subject Matter***

Claims 31-49 would be allowed if terminal disclaimers as suggested above were filed.

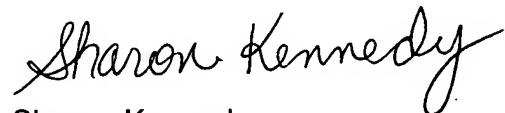
The following is a statement of reasons for the indication of allowable subject matter: Applicant has previously provided comments concerning the novel combination of the chlorhexidine-free base and chlorhexidine salt. See the prosecution histories of the parent applications and other related applications, particularly the discussions concerning Solomon, US 6,261,271 and similar references.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Kennedy whose telephone number is 703/305-0154. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703/308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sharon Kennedy  
Primary Examiner  
Art Unit 3762

Sek